

1 third degree. Under our law, a person is guilty of criminal
2 sexual act in the third degree when, being 21 years or more,
3 he engages oral sexual conduct with a person who is
4 incapable of consent for reason of being less than 17 years
5 old.

6 This is the same as the fourteenth count except a
7 different time period. So in order for you to find the
8 defendant guilty of this crime, the People are required to
9 prove from all the evidence in the case each of the
10 following three elements: One, that on or about January 1,
11 2008 and February 28, 2008 here in Queens County, the
12 defendant engaged in oral sexual conduct with Sana Awan; and
13 two, that the defendant was 21 year old or more at the time;
14 and three, that Sana Awan was incapable of consent because
15 she was less than 17 years old.

16 Therefore, if you find that the People have proven
17 beyond a reasonable doubt each of those elements, you must
18 find the defendant guilty of the crime of criminal sexual
19 act in the third degree as charged in the fifteenth count.

20 On the other hand, if you find that the People
21 have not proven beyond a reasonable doubt any one or more of
22 those elements, you must find the defendant not guilty of
23 the crime of criminal sexual act in the third degree as
24 charged in the fifteenth count.

25 The sixteenth count is assault in the third

1 degree. Under our law, a person is guilty of assault in the
2 third degree when, with intent to cause physical injury to
3 another person, he causes such injury to that person.

4 Physical injury means impairment of physical
5 condition or substantial pain.

6 Intent means conscious objective or purpose.

7 Thus, a person acts with intent to cause physical
8 injury to another when that person's objective or purpose is
9 to cause physical injury to another.

10 So in order for you to find the defendant guilty
11 of this crime, the People are required to prove from all the
12 evidence in the beyond a reasonable doubt both of the
13 following two elements: One, that on or about June 21, 2008
14 here in Queens County, the defendant caused physical injury
15 to Sana Awan; and two, that the defendant did so with the
16 intent to cause physical injury to Sana Awan.

17 Therefore, if you find that the People have proven
18 beyond a reasonable doubt both of those elements, you must
19 find the defendant guilty of the crime of assault in the
20 third degree as charged in the sixteenth count.

21 On the other hand, if you find the People have not
22 proven beyond a reasonable doubt either one or both of them,
23 you must find the defendant not guilty of the crime of
24 assault in the third degree as charged in the sixteenth
25 count.

1 Seventeenth and final count is endangering the
2 welfare of a child. Under our law, a person is guilty of
3 endangering the welfare of a child when that person
4 knowingly acts in a matter manner likely to be injurious to
5 the physical, moral welfare of a child less than 17 years
6 old.

7 A person knowingly acts in a manner likely to be
8 injurious to the physical, mental or moral welfare of a
9 child when that person is aware he is acting in such manner.
10 To cause actual harm to the child need not result.

11 The defendant must act in a manner that is likely
12 to be injurious to the physical, mental or moral welfare of
13 a child, knowing of the likelihood of such injury.

14 Knowledge of the age of the child is not an
15 element of this crime, and it is not a defense to this
16 charge that the defendant did not know the age of the child
17 or believe the age of the child to be 17 years old or more.

18 In order for you to find the defendant guilty of
19 this crime, the People are required to prove from all the
20 evidence in the case beyond a reasonable doubt each of the
21 following three elements: One, that on or about and between
22 June 24, 2006 and February 29, 2008 here in Queens County,
23 the defendant acted in a manner likely to be injurious to
24 the physical, mental or moral welfare of Sana Awan; two,
25 that the defendant did so knowingly; three, that Sana Awan

1 was less than 17 years old.

2 Therefore, if you find that the People have proven
3 beyond a reasonable doubt each of those elements, you must
4 find the defendant guilty of the crime of endangering the
5 welfare of a child as charged in the seventeenth and final
6 count.

7 On the other hand, if you find that the People
8 have not proven beyond a reasonable doubt any one or more of
9 those elements, you must find the defendant not guilty of
10 the crime of endangering the welfare of the child as charged
11 in the seventeenth and final count.

12 Members of the jury, every time you left this
13 courtroom, I told you you couldn't form an opinion. The
14 time has come, you have now heard the entire case, you can
15 exchange your views. I am sure you do not have to dwell
16 upon the part, the manner in which you share the sacred
17 responsibility. When you go to the jury room to deliberate,
18 you may well find various opinions and conclusions among
19 yourselves as jurors. You have a duty to consult with one
20 another and to deliberate with a view toward reaching an
21 agreement, if it can be done without violence to individual
22 judgment. Make every effort to harmonize the various views
23 expressed by your fellow jurors and make every effort to
24 come to an agreement which would speak the truth as far as
25 the facts in this case are concerned.

1 You must not go into the jury room with a closed
2 mind and refuse to listen to the opinions of your fellow
3 jurors and decline to discuss the case with the rest of
4 them. You should not close your minds so as to prejudice
5 the conclusions to be arrived at without at least listening
6 to the arguments advanced by your fellow jurors who, I am
7 sure, are just as much interested in coming to an honest
8 decision in this case as you are.

9 In other words, each of you must decide for
10 yourself but only after an impartial consideration of the
11 evidence with your fellow jurors for the purpose of
12 harmonizing your views and decisions in the interest of
13 justice and fair play with the views of your fellow jurors.

14 If your recollection of any testimony should fail
15 or if you should find yourselves in doubt as to the law that
16 I just read to you, you may request that it be read back to
17 you in a note. Upon your request any exhibits received into
18 evidence will be furnished to you.

19 I ask that you apply your good, common sense and
20 good judgment to be impartial and fair in your judgment. Do
21 not let sympathy or judgment interfere. In analyzing the
22 testimony, you are to decide this case on the evidence and
23 under the law that I just gave you. Your verdict in this
24 case must be unanimous, that is, all twelve of you must
25 agree.

1 Your verdict will be announced through your
2 foreperson, Kevin Lee Young, who is juror number one. Any
3 requests that you have throughout the course of your
4 deliberations must be written down on a note and must be
5 signed by Kevin Lee Young, your foreperson.

6 To assist you in your final deliberations, I have
7 prepared a written list called a verdict sheet which will be
8 marked as Court Exhibit Number 2 which contains a list of
9 the specific counts of the indictment. Verdict sheet
10 provides a column for your foreperson to record your verdict
11 as to each separate offense committed for your final
12 determination. It will be either guilty or not guilty and
13 must be unanimous with respect to each count submitted in
14 accordance with my instructions in order to constitute a
15 verdict.

16 Counsel, approach the bench, please.

17 (Whereupon, a conference was held between all
18 counsel and the Court on the record at the side-bar.)

19 THE COURT: I told you both to initial one of
20 those together.

21 MR. ROSENBLATT: On the back, Judge?

22 THE COURT: On the front right-hand corner.

23 Mark this Court Exhibit Number 2.

24 (Whereupon, the item referred to was marked for
25 evidence as Court's Exhibit 2 by the Court Reporter.)

1 (Whereupon, a discussion was held off the record.)

2 THE COURT: What's your position on the verdict
3 sheet, Mr. Bandelli?

4 MR. BANDELLI: It does not contain the date of one
5 of the charges, one of the counts but contains the date of
6 every one of the other counts, leaving open for the jury to
7 question when specifically the assault happened.

8 THE COURT: All right. The only reason that the
9 Court put dates in the other ones of the multiple counts of
10 sexual act in the first degree, in fact the first six counts
11 of multiple counts of sexual abuse in the first degree;
12 however, if you prefer that, we will redo the verdict sheet.

13 MR. BANDELLI: Just add that thing.

14 THE COURT: The date for assault in the third
15 degree.

16 Do you have any exception to the charge?

17 MR. ROSENBLATT: No.

18 MR. BANDELLI: That was good.

19 THE COURT: Do you both consent to giving them
20 physical exhibits --

21 MR. BANDELLI: Yes, absolutely.

22 THE COURT: -- without the necessity of calling
23 you back to the courtroom?

24 MR. BANDELLI: Definitely.

25 MR. ROSENBLATT: Yes.

1 THE COURT: Thank you.

2 (Whereupon, all parties returned from the sidebar
3 and the following took place:)

4 THE COURT: All right, ladies and gentlemen. You
5 may now start to deliberate on the case. Please follow the
6 instruction of the court officer.

7 (Whereupon, the jury exited the courtroom and the
8 following occurred:)

9 THE COURT: Please leave your cell phone numbers
10 with the clerk if we have you haven't already done so.

11 Jurors will be eating their lunch now.

12 MR. BANDELLI: Do you separate the alternates from
13 the rest of the group?

14 THE COURT: They are kept separate.

15 MR. BANDELLI: I didn't hear you say that.

16 THE COURT: They are kept separate. They are kept
17 separate.

18 All right. Please put the defendant back in.

19 (Whereupon, a recess was taken, after which the
20 following occurred.)

21 (Whereupon, the item referred to was marked for
22 evidence as Court's Exhibit 3 by the Court Reporter.)

23 THE OFFICER: Court's Exhibit 3 marked and
24 received in evidence.

25 THE CLERK: Case on trial. All parties present,

1 your Honor.

2 THE COURT: We received a note from the jurors
3 which has been marked Court Exhibit Number 3.

4 It reads: The members of the jury have reached a
5 verdict.

6 We will bring the jury in and take that verdict.

7 (Whereupon, the jury entered the courtroom and
8 upon taking their respective seats, the following occurred:)

9 THE CLERK: Case on trial. All parties present,
10 your Honor.

11 Do both sides stipulate that all jurors are
12 present and properly seated?

13 MR. ROSENBLATT: Yes.

14 MR. BANDELLI: So stipulated, Judge.

15 THE COURT: All right, ladies and gentlemen. I
16 received a note which has been signed by your foreperson and
17 it's been marked Court Exhibit Number 3 and it reads: The
18 members of the jury have reached a verdict.

19 The clerk will now take your verdict.

20 THE CLERK: Will the foreperson please rise?

21 THE FOREPERSON: (Complying.)

22 THE CLERK: Has the jury agreed upon a verdict?

23 THE FOREPERSON: Yes.

24 THE CLERK: Is that verdict unanimous in all
25 respects?

1 THE FOREPERSON: Yes.

2 THE CLERK: As to count number one, criminal
3 sexual act in the first degree, what is your verdict?

4 THE FOREPERSON: Guilty.

5 THE CLERK: As to count number two, criminal
6 sexual act in the first degree, what is your verdict?

7 THE FOREPERSON: Guilty.

8 THE CLERK: As to count number three, criminal
9 sexual act in the first degree, what is your verdict?

10 THE FOREPERSON: Guilty.

11 THE CLERK: As to count number four, criminal
12 sexual act in the first degree, what is your verdict?

13 THE FOREPERSON: Guilty.

14 THE CLERK: As to count five, criminal sexual act
15 in the first degree, what is your verdict?

16 THE FOREPERSON: Guilty

17 THE CLERK: As to count number six, criminal
18 sexual act if the first degree, what is your verdict?

19 THE FOREPERSON: Guilty.

20 THE CLERK: As to count number seven, sexual abuse
21 in the first degree, what is your verdict?

22 THE FOREPERSON: Guilty.

23 THE CLERK: As to count number eight, sexual abuse
24 in the first degree, what is your verdict?

25 THE FOREPERSON: Guilty.

1 THE CLERK: As to count number nine, sexual abuse
2 in the first degree, what is your verdict?

3 THE FOREPERSON: Guilty.

4 THE CLERK: As to count number ten, sexual abuse
5 in the first degree, what is your verdict?

6 THE FOREPERSON: Guilty.

7 THE CLERK: As to count number eleven, sexual
8 abuse in the first degree, what is your verdict?

9 THE FOREPERSON: Guilty.

10 THE CLERK: As to count number twelve, sexual
11 abuse in the first degree, what is your verdict?

12 THE FOREPERSON: Guilty.

13 THE CLERK: As to count number thirteen, sexual
14 criminal sexual act in the second degree, what is your
15 verdict?

16 THE FOREPERSON: Guilty.

17 THE CLERK: As to count number fourteen, criminal
18 sexual act in the third degree what is your vert verdict?

19 THE FOREPERSON: Guilty.

20 THE CLERK: As to count number fifteen, criminal
21 sexual act in the third degree, what is your verdict?

22 THE FOREPERSON: Guilty.

23 THE CLERK: As to count number sixteen, assault in
24 the third degree, what is your verdict?

25 THE FOREPERSON: Guilty.

1 THE CLERK: As to count number seventeen,
2 endangering the welfare of a child, what is your verdict?

3 THE FOREPERSON: Guilty.

4 THE CLERK: You can be seated.

5 Jurors, hear your verdict as it stands, recorded,
6 you say you found the defendant guilty of count one,
7 criminal sexual act in the first degree; guilty of count
8 two, criminal sexual act in the first degree; guilty of
9 count three, criminal sexual act in the first degree; guilty
10 of count four, criminal sexual act in the first degree;
11 guilty of count five, criminal sexual act in the first
12 degree; guilty of count six, criminal sexual act in the
13 first degree; guilty of count seven, sexual abuse in the
14 first degree; guilty of count eight, sexual abuse in the
15 first degree; guilty of count nine, sexual abuse in the
16 first degree; guilty of count ten, sexual abuse in the first
17 degree; guilty of count eleven, sexual abuse in the first
18 degree; guilty of count twelve, sexual abuse in the first
19 degree; guilty of count thirteen, criminal sexual act in the
20 second degree; guilty of count fourteen, criminal sexual act
21 in the third degree; guilty of count fifteen, criminal
22 sexual act in the third degree; guilty of count sixteen,
23 assault in the third degree; and guilty of count seventeen,
24 endangering the welfare of a child.

25 Is that your verdict?

1 THE FOREPERSON: Yes.

2 THE COURT: Would either side like the jury
3 polled?

4 MR. BANDELLI: Yes.

5 THE CLERK: Jurors, please answer the following
6 question: The verdict announced by your foreperson is your
7 verdict in all respects.

8 Juror number one, is that your verdict?

9 THE FOREPERSON: Yes.

10 THE CLERK: Juror number two, is that your
11 verdict?

12 JUROR NUMBER TWO: Yes.

13 THE CLERK: Juror number three, is that your
14 verdict?

15 JUROR NUMBER THREE: Yes.

16 THE CLERK: Juror number four, is that your
17 verdict?

18 JUROR NUMBER FOUR: Yes.

19 THE CLERK: Juror number five, is that your
20 verdict?

21 JUROR NUMBER FIVE: Yes.

22 THE CLERK: Juror number six, is that your
23 verdict?

24 JUROR NUMBER SIX: Yes.

25 THE CLERK: Juror number seven, is that your

1 verdict?

2 JUROR NUMBER SEVEN: Yes.

3 THE CLERK: Juror number eight, is that your
4 verdict?

5 JUROR NUMBER EIGHT: Yes.

6 THE CLERK: Juror number nine, is that your
7 verdict?

8 JUROR NUMBER NINE: Yes.

9 THE CLERK: Juror number ten, is that your
10 verdict?

11 JUROR NUMBER TEN: Yes.

12 THE CLERK: Juror number eleven, is that your
13 verdict?

14 JUROR NUMBER ELEVEN: Yes.

15 THE CLERK: Juror number twelve, is that your
16 verdict?

17 JUROR NUMBER TWELVE: Yes.

18 THE CLERK: Your Honor, the jurors individually
19 confirmed the verdict.

20 THE COURT: All right, ladies and gentlemen, I
21 want to thank you on behalf of both sides and the criminal
22 justice system here in Queens County. I know we take you
23 away from your jobs and your lives for a two-week period
24 every so often and it's an inconvenience to you, but you are
25 an essential part of the criminal justice system here in our

1 county. Without you coming in here, we wouldn't hold these
2 jury trials, obviously.

3 So I want to thank you for your time and patience.
4 And every time you left the courtroom I told you you could
5 not speak to anyone about the case. That ban is now lifted.
6 You can speak to anybody you want to about the case or you
7 don't have to speak to people about it, it's all up to you
8 now. Do you understand that the ban has been lifted?

9 And as I said, I want to thank you and wish you
10 well and court officer will now take you back to the room.
11 Thank you very much.

12 (Whereupon, the jury exited the courtroom and the
13 following occurred:)

14 THE COURT: August 11th for sentence; is that a
15 good date?

16 MR. BANDELLI: It's actually not, Judge, I'm not
17 going to be around.

18 THE COURT: When are you coming back?

19 MR. BANDELLI: Towards the ends of August, the
20 last week.

21 THE COURT: September 1st a good date?

22 Has to be a Wednesday.

23 MR. BANDELLI: Can we do the 8th, Judge?

24 THE COURT: September 8th for sentence.


25 Defendant is remanded.


1 MR. ROSENBLATT: I will do an order to produce for
2 that date, Judge.

3
4 (The trial was adjourned to September 8, 2010,
5 930 A.M.)
6
7

8 * * *

9 CERTIFIED THAT THE FOREGOING
10 IS A TRUE AND ACCURATE TRANSCRIPT
11 OF THE ORIGINAL STENOGRAPHIC
12 MINUTES IN THIS CASE.

13 
14 GAIL J. NEUFELD, RPR
Senior Court Reporter

15 
16 SHERYL FITZPATRICK
17 Senior Court Reporter

18 
19 JOHN CARDILLO
20 Senior Court Reporter
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Direct Cross Redirect Recross

FOR THE PEOPLE:

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ADA BRIAN HUGHES	686	695		
SANA AWAN	467	524		
CELICA ALFARO HARBUS	557	573	599	601
CHRISTINE ALIOTO	603	613		
DENISE ALIOTO	619	629	645	
DR. DON LEWITES	651	667		

FOR THE DEFENDANT:

MERLIN ALI-GOPAUL	719	743	784	
HAROLD GOPAUL	806	840		

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CA#132-10

1

COPY

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF QUEENS: CRIMINAL TERM, PART TAP D

-----X

3 THE PEOPLE OF THE STATE OF NEW YORK, Indictment No.

4 -against-

2065-2008

5 Sentence

6 HAROLD GOPAUL,

7 Defendant.

-----X

8 September 8, 2010

9 125-01 Queens Boulevard

10 Kew Gardens, New York 11415

11

12 B E F O R E :

13 GREGORY L. LASAK,

14 Justice, Supreme Court

15

16 A P P E A R A N C E S :

17

18 For the People:

19 THE HONORABLE RICHARD A. BROWN,
District Attorney, Queens County,

20 BY: JARED ROSENBLATT, ESQ.

21 Assistant District Attorney

22

23

24 For the Defendant:

25 STANFORD BANDELLI, ESQ.

MINDY S. ELGARTEN

Official Court Reporter

mse

Proceedings

2

1 COURT CLERK: Calendar number 9, on for
2 sentence, Harold Gopaul.

3 (Defendant enters courtroom.)

4 COURT CLERK: Let the record reflect
5 defendant Gopaul is now before the Court.

6 Counsel, your appearances, please.

7 MR. ROSENBLATT: For the People Assistant
8 District Attorney Jared Rosenblatt.

9 Good morning, your Honor.

10 MR. BANDELLI: Stanford Bandelli on behalf
11 of Harold Gopaul.

12 Good morning, Judge Lasak.

13 THE COURT: Is your client ready for
14 sentencing, Mr. Bandelli?

15 MR. BANDELLI: One moment, Judge. I just
16 got the presentence report.

17 (Whereupon, the attorney and defendant
18 confer.)

19 THE COURT: Mr. Bandanna, you want another
20 call on this?

21 MR. BANDELLI: Can you give me another 30 --
22 I just got the presentence report.

23 THE COURT: You want another call?

24 MR. BANDELLI: Please.

25 THE COURT: Second call.

Proceedings

3

1 MR. BANDELLI: I apologize.

2 (Case set aside; later recalled.)

3 * * *

4 COURT CLERK: Recall on number 9, Harold
5 Gopaul.

6 (Defendant enters courtroom.)

7 COURT CLERK: Let the record reflect
8 defendant Gopaul is now before the Court.

9 MR. BANDELLI: Again, Stanford Bandelli on
10 behalf of Harold Gopaul.

11 Good afternoon, Judge Lasak.

12 I had the opportunity to go through the plea
13 pleading investigation. I thank you for the
14 additional time you gave.

15 THE COURT: Is your client now ready for
16 sentencing?

17 MR. BANDELLI: Yes.

18 THE COURT: You want to move to sentence,
19 Mr. DA?

20 MR. ROSENBLATT: Yes, your Honor. On behalf
21 of the People of the State of New York I move
22 Indictment 2065 of 2008, People versus Harold Gopaul
23 to sentence.

24 THE COURT: Mr. DA, is there any victim
25 impact statement?

1 MR. ROSENBLATT: No, Judge. The victim in
2 this case, Sana is present in the courtroom. She did
3 not wish to address the Court. But I did wish to
4 address the Court in regards to a few things with the
5 Court's permission.

6 I submitted a letter to both your Honor and
7 Mr. Bandelli in regards to the sentence, but I would
8 just note a few additional things.

9 Since this case began in 2005 this case
10 pretty much boils down to a be trial by the defendant
11 of his father/daughter like relationship to Sana who
12 began a father/daughter like relationship at an
13 extremely young age with the defendant and her mother.

14 The defendant's acts in regards to what he
15 was convicted of are purely selfish in nature. The
16 defendant confessed both in writing and video and his
17 selfish acts continued in Nassau County which required
18 Sana to testify at trial in Nassau County where the
19 defendant was convicted and sentenced to 12 years. I
20 just note the error in the presentence report which
21 dates a time less than that. But the selfish acts
22 continued by the defendant, Judge, because in this
23 case after he was convicted the defendant was offered
24 a plea to run concurrent in order for Sana to not be
25 required to testify again against the defendant. But

1 he did not avail himself to that offer.

2 And the selfish acts didn't end there. They
3 continued when he had his wife, the mother of Sana,
4 testify before this Court, and she testified that in
5 fact back in 2008 when this case began that the
6 defendant called her from central booking and she
7 asked him why he did this and the defendant told her
8 because he was sick. That's why he did it.

9 And, your Honor, that couldn't be more true
10 in describing this defendant and his acts. He is
11 sick. He is sick for the selfish acts he committed on
12 his stepdaughter. He is sick for the selfish acts he
13 did with regards to this trial requiring her to
14 testify. He is sick in regards to the testimony that
15 he provided this Court, and he deserves no mercy.

16 He has taken from Sana her two siblings
17 which she has no contact with. He has taken away
18 family members which he turned against her from the
19 beginning of this case. And she will not forget the
20 abuse she suffered over the course of three years as a
21 result of this defendant. And she won't forget the
22 fact that she had to testify twice convicting him both
23 times by two different juries in two different
24 counties.

25 I would just ask your Honor to impose a

1 sentence to this defendant to send a message that the
2 criminal justice system will not tolerate selfish
3 sexual acts like this that this defendant began.

4 And I hope that when he continues his
5 sentence in Nassau County and they sentence in this
6 case, which I would ask to run consecutive, that her
7 testimony in both cases lingers in his ears. I hope
8 he hears the words she uttered from the witness stand
9 in both counties, what I hope to be the rest of his
10 life in jail, that his selfish acts where he now sits.

11 THE COURT: Thank you, Mr. DA.

12 Mr. Bandelli?

13 MR. BANDELLI: Thank you, Judge.

14 Your Honor, there are several things I need
15 to put on the record, Judge, because of; the fact I
16 think the Court should consider in imposing sentence.

17 With regards to the correspondence or
18 presentence memorandum which ADA Rosenblatt referred
19 to I just received that today and I know that the
20 statute, the CPL, I think it's section 390.40 requires
21 the prosecutor to serve it on me at least ten days
22 prior to sentencing which means that it really should
23 not be a factor at this point. It should be
24 discounted by the Court because he has not complied
25 with the statute.

1 That being said there's also one particular
2 line in the second page of this that I take issue with
3 and it is something I took issue with at trial and I
4 objected to.

5 In the second paragraph, the second sentence
6 the DA says Sana's mother chose the defendant over her
7 own flesh and blood after the defendant admitted not
8 only to the police, and this is the key part, but to
9 her that he molested Sana. I object very strongly to
10 that being in this letter. I object very strongly at
11 the trial on the basis, first of all, that was
12 improper cross-examination of Miss Gopaul and also
13 that was not what was reflected on the tape recorder.
14 That being said --

15 THE COURT: The sentence that this court
16 will impose is not taking that phrase or that sentence
17 in that paragraph into consideration at all.

18 MR. BANDELLI: Thank you Judge.

19 That was just handed to me and I thought
20 that needed to be on the record.

21 In terms of sentencing factors, you know,
22 when you look at the CPL I have read any number of
23 times, one of the things that is credible is
24 determining who the person is beyond the crimes that
25 he committed and Mr. Gopaul who's 53 years old right

1 now -- 52, 52 years old, essentially has no criminal
2 history outside the session of this case, was a
3 hard-working man in the extermination business -- was
4 supporting a family, you know, basically had a high
5 school education -- he built himself up from scratch.
6 He was able to provide for his family. He has two
7 other children, a wife and family that has been here
8 throughout the case so we're not talking about
9 somebody who is over the course of his life not been a
10 productive member of society and he has not placed his
11 interest above society in a broader context.

12 The man is more than the charges that this
13 trial was about, and his sister is sitting in the
14 courtroom in the second row here today. One of the
15 things that strikes me about this case in particular
16 and it struck me from the beginning is the amount of
17 devastation that has been suffered by the entire
18 family including Sana, including Carmen, including
19 brothers, including other children, including the mom
20 as a result of whatever had happened between my client
21 and his daughter and what the jury in Nassau and the
22 jury in Queens ultimately rendered a verdict on, that
23 this family has been ripped apart at the seams. She's
24 no longer part of the family. His younger children
25 may never see him again. The mother is being forced

1 now to raise the children on their own. And I
2 understand the response to that is, well,
3 Mr. Bandelli, your client created that situation. If
4 not for the actions of your client it didn't have to
5 be like that. And while I understand that argument
6 the point I'm making is that there's a sentence here
7 that permits the family to heal at a certain point; in
8 other words, it doesn't have to be a sentence which
9 sort of insures that this man never has a relationship
10 with his other children, that this man never be able
11 to see his other children.

12 There's a punishment that can be imposed
13 that says, you know, the CPL that says the criminal
14 justice system which doesn't basically cause him to
15 end his life in jail. In Nassau they had given him 12
16 years. I would note in the victim impact statement --
17 and Sana was interviewed, she is here right now and
18 she can say if this is correct -- it says that the
19 victim would be satisfied if the defendant received a
20 sentence that he had previously received and is
21 currently serving and should be kept away from her.
22 So it doesn't seem like she wants to see him die in
23 jail either. She seems to understand that 12 years is
24 a significant jail period and she is not putting
25 additional pressure on the prosecutor or the Court to

1 basically put this plan away for life. Twelve years
2 is a long time. And the reality is they had offered
3 him a concurrent sentence of five years. And, you
4 know, I would hate that people would not -- not
5 exercise their right to go to trial just because now
6 you're going to get punished ten times greater than
7 you would have been punished had you not gone to trial
8 because the facts are still the same. Whatever the DA
9 said about my client, whatever selfishness he has is
10 not because he had the trial he was selfish. It was
11 there before. And somehow even though he was
12 convicted in Nassau is okay. I know your Honor is not
13 going to give him five years concurrent. These are
14 factors in determining what the appropriate sentence
15 is.

16 THE COURT: I believe the big factor in the
17 plea offer was the fact it would save Sana the trauma
18 of testifying in an open public courtroom again about
19 these matters after having already testified similarly
20 out in Nassau County.

21 MR. BANDELLI: Well, certainly that was an
22 issue, right. I agree with having her have to revisit
23 coming back here and dealing with that again. I
24 understand that's something you are going to consider
25 in terms of what the sentence is. Does that mean he

1 should do 20 years in jail because she came back in
2 here and testified a second time?

3 THE COURT: So the record is complete, as
4 far as that offer before trial the Court was not going
5 along with that offer before trial, you know that.

6 MR. BANDELLI: Judge, you had made it very
7 clear you weren't somebody who was of the mindset of
8 concurrent time, but we had been before Judge Kron and
9 Judge Buchter and they were of the mindset that would
10 be something acceptable. I recognize your position
11 was not the same as theirs but that was their position
12 of going forward, and I accept what you're saying at
13 this point. My point is, again, as a former
14 prosecutor, somebody who's been doing this in serious
15 cases with violent felonies with people who deserve to
16 spend their life in jail, about people who deserve to
17 get 25 years, I know there are people who have done
18 much more serious things than my client and are not
19 sentenced to the amount of time my client is currently
20 exposed to. Okay.

21 And the reality is as important as what came
22 out of the witness box he was convicted by virtue of a
23 jury's verdict of the DA presenting the case, but the
24 amount of exposure is off the charts. Does that mean
25 just because it's off the charts and he was found

1 guilty because you have the power basically to give
2 him a life sentence, that should not happen in light
3 of the fact she is not looking for him to get
4 additional time.

5 Outside of this matter going to trial this
6 guy has led an exemplary life outside he's been a
7 working man. He's been a family man. And he's done
8 certain things. I am not diminishing what the jury
9 has said. I am pointing out other things. I think
10 there's a sentence that is more reasonable than maxing
11 him out because he can be maxed out on this.

12 I do have a notice of appeal prepared. I'm
13 turning it over to the DA. The DA will execute it and
14 date it and it will be accepted after you execute
15 sentence. I just want that to be on the record.

16 I have not filed a 30.30 motion. I never
17 intended to file a 30.30 motion because it is my
18 position that issues are pending are better served
19 through the appellate process than through a 30.30
20 motion.

21 I ask your Honor to consider all the
22 arguments that I have made. I have a great amount of
23 respect for you, Judge Lasak, I think there's a
24 sentence that's reasonable here, a sentence that says
25 this isn't okay and sort of validates you know what

1 this woman went through and she seems to be okay with
2 it.

3 Unless, you know, the DA is going to say
4 something different I, don't know, I am just relying
5 on what I seen in the presentence report. He's going
6 to be 65 years old before he comes out. You go
7 another ten years this guy is probably going to die in
8 jail, so I don't believe that this case justifies that
9 type of punishment and I will -- I've had my say.

10 THE COURT: Thank you, Mr. Bandelli.

11 Mr. Gopaul, do you have anything you want to
12 say to me before I sentence you?

13 THE DEFENDANT: Yes. Yes, your Honor.

14 THE COURT: You want to uncuff the defendant
15 please so he can hold that piece of paper?

16 MR. BANDELLI: Thank you, Judge.

17 THE DEFENDANT: Thank you, your Honor. Good
18 morning, your Honor. I would like to take into
19 consideration before my sentencing that I'm a good
20 father and a good husband. Since my arrest in 2008 I
21 deny all the offers that they offered me. I was
22 offered probation and three and a half years
23 concurrent. I refused that in Queens and Nassau
24 because I maintain my innocence. I request leniency
25 in this Court and that sentence imposed run

1 concurrent.

2 I would like to put on the record that my
3 family leave me and I had through the trial a lot of
4 witnesses that came to testify which may have had a
5 different outcome in the trial. I think this was
6 harmless error. I'm just asking the Court to be
7 lenient and do the best for me. I'm already doing a
8 lot of time already. Thank you, your Honor.

9 THE COURT: Mr. Gopaul, I never know what I
10 intend to impose as a sentence until I hear from the
11 person who's been convicted by a jury as you have
12 been. You just mentioned something about witnesses
13 and harmless error. That doesn't impress the Court in
14 terms of effecting any sentence.

15 This incident -- these incidents were with
16 your stepdaughter Sana and you raised her with your
17 wife since she was three years old.

18 You have every right to maintain your
19 innocence but a jury of your peers here in Queens
20 County heard all the evidence and convicted you of all
21 17 counts.

22 A jury of your peers out in Nassau County
23 also heard all the evidence out there and convicted
24 you of how many counts they did out there. And any
25 sentence I give you is not taking into consideration

1 that sentence out there or what happened at that
2 trial. The only reason I bring that up was I saw a
3 videotape made by the District Attorney in which you
4 confessed to certain aspects of the crimes to which
5 you were charged with. And that confession I found to
6 be voluntarily made by you and the jury found that
7 confession to be voluntarily made so.

8 I know you have an appeal and anything you
9 say here will not effect that appeal but you may think
10 it will, and you have every right to maintain what you
11 claim to be your innocence.

12 You were presumed to be innocent before both
13 of these trials and both juries found the evidence
14 overwhelming and convicted you. As I said, I watched
15 that video statement that you made that you confessed.

16 The first step for you to is to get on with
17 your life, to own up to your responsibilities of what
18 you did.

19 You had a responsibility to Sana as your
20 stepdaughter to help raise her with your wife and
21 there was a sacred trust there. And the evidence in
22 this trial indicated overwhelmingly that you violated
23 the sacred trust and you left her scarred for the rest
24 of her life. The first step getting on with your
25 life, as I said, is to take responsibility.

1 Do you have anything you want to say to Sana
2 or do you still want to maintain your innocence in
3 this case along those lines which will affect my
4 decision in this case somewhat.

5 (Whereupon, the defendant and attorney
6 confer.)

7 THE COURT: While you are talking with your
8 lawyer, Mr. DA is there anything you want to say?

9 MR. ROSENBLATT: I would just echo what your
10 Honor is mentioning now, and, that is, through the
11 entirety of this proceeding the defendant has never
12 apologized to Sana. He's never offered any remorse to
13 Sana and he's done nothing in regards to offering any
14 of his condolences for what he put her through. I
15 would just echo your Honor's opinions in regards to
16 that.

17 (Whereupon, the defendant and lawyer
18 confer.)

19 THE COURT: Mr. Gopaul -- let me interrupt
20 you for a second. Mr. Gopaul, I was just stating that
21 because I watched the videotaped statement and you
22 seem to have voluntarily without any coercion on
23 anyone's part made admissions to certain crimes
24 charged here, and I don't want to make you feel like
25 you have to do anything here you don't wish to do, you

1 don't have to say anything here and maintain your
2 innocence here.

3 I don't want to put any pressure on you. I
4 just thought as a father you may have something you
5 want to say to your stepdaughter about this. And
6 you're free not to. It's your decision. Do you want
7 to talk to your client?

8 MR. BANDELLI: The only thing, Judge, just
9 in terms of my own thing, I've never felt that
10 statement was voluntary, so just note that.

11 THE COURT: That's fine.

12 MR. BANDELLI: I just want that to be on the
13 record. It's been my position all along it was a
14 coerced statement.

15 THE COURT: That's fine.

16 MR. BANDELLI: Essentially I can tell he's
17 sorry that she went through what she's gone through
18 and that the whole family has been subjected to that.

19 THE COURT: Mr. Bandelli, please don't
20 insult the Court. I don't like it when an attorney
21 says a defendant says. That type of apology is
22 meaningless.

23 MR. BANDELLI: I understand.

24 (Whereupon, the defendant and attorney
25 confer.)

1 THE DEFENDANT: I have nothing to say, your
2 Honor.

3 (Whereupon, the defendant and attorney
4 confer.)

5 THE COURT: All right. As I stated before--

6 MR. ROSENBLATT: Judge, if I can just have a
7 brief moment please with the Court's permission.

8 Judge, with the Court's permission Sana
9 wishes to address the comments made by Mr. Bandelli.
10 He specifically called on her to respond to what he
11 was saying.

12 MR. BANDELLI: I didn't call on her.

13 THE COURT: You did. You asked for a
14 response.

15 MR. ROSENBLATT: If the Court doesn't --

16 THE COURT: I'll entertain anything you have
17 to say. Just state your name again, Sana.

18 MS. ANAN: Sana Anan. I just want to say I
19 choose not to speak. I thought there was nothing
20 necessary to add to what's already been said. But I
21 would like to say 12 years was sufficient. But I'll
22 leave it up to the Court to add whatever is your
23 decision.

24 THE COURT: Thank you, Sana. Thank you.
25 Mr. Gopaul, you wish to add anything?

1 THE DEFENDANT: I just want to tell Sana,
2 yes, I want to tell Sana I'm sorry for what you went
3 through, what your family, whatever you want to do in
4 life dedication. Thank you.

5 THE COURT: I didn't hear what you said.
6 You're sorry for what she's going through?

7 THE DEFENDANT: Yes.

8 THE COURT: All right. As I said before,
9 the jury heard all the evidence in this case and they
10 found you guilty of all 17 counts that was submitted.

11 The sentence I'm about to impose, I'm taking
12 into account all the facts and circumstances of this
13 case, all the evidence.

14 I read the probation report. I've
15 considered the recommendations made by the People as
16 well as your attorney as well as the statement that
17 you gave here. As I said before that you left Sana
18 with scars that she has to bear the rest of her life.
19 This abuse went on for a period of years. It was not
20 one incident. In fact it went on within two counties,
21 this county and Nassau County. And you basically
22 ostracized her from the family based upon the fact
23 that she came forward to testify against you to bring
24 these charges against you for the actions that you
25 committed, that the jury found after hearing all the

1 evidence that you committed. Taking all that into
2 consideration, including the fact that you had no
3 criminal record other than the fact that you had been
4 charged in those two counties for these incidents
5 involving Sana, your stepdaughter, other than that,
6 you have no criminal record, I take that into
7 consideration. That's what makes the sentence on this
8 case so difficult for the Court.

9 The sentence of the Court is as follows:

10 On the 17th count, endangering the welfare
11 of a child, an A misdemeanor, the sentence of the
12 Court is one year incarceration.

13 On the 16th count, assault in the third
14 degree, an A misdemeanor, the sentence of the Court is
15 one year incarceration.

16 On the 15th count, criminal sexual act in
17 the third degree, an E felony, the sentence of the
18 Court is a determinate sentence of state's prison of
19 three years plus ten years post-release supervision.

20 On the 14th count, criminal sexual act in
21 the third degree, an E felony, the sentence of the
22 Court is a determinate sentence of state's prison of
23 three years plus ten years post-release supervision.

24 On the 13th count criminal sexual act in the
25 second degree, a class D felony, the sentence of the

1 Court is a determinate sentence of state's prison of
2 five years plus ten years of post-release supervision.

3 On the 12th count of criminal sexual act in
4 the second degree, a class D felony, the sentence of
5 the Court is a determinate sentence of state's prison
6 of 5 years plus 10 years of post-release supervision.

7 On the 11th count of criminal sexual act in
8 the second degree, a class D felony, the sentence of
9 the Court is a determinate sentence of state's prison
10 of five years plus ten years post-release supervision.

11 On the tenth count of sexual abuse in the
12 first degree, a class D felony, the sentence of the
13 Court is a determinate sentence of five years plus ten
14 years post-release supervision.

15 On the ninth count of sexual abuse in the
16 first degree, a class D felony, the sentence of the
17 Court is a determinate sentence of five years plus ten
18 years post-release supervision.

19 On the eighth count of sexual abuse in the
20 first degree, again, a class D felony, the sentence of
21 the Court is a determinate sentence of five years plus
22 ten years post-release supervision.

23 On the 7th count of sexual abuse in the
24 first degree, again, a class D felony, the sentence of
25 the Court is a determinate sentence of five years plus

1 ten years post-release supervision.

2 On the sixth count, sexual abuse in the
3 first degree, a class D felony, the sentence of the
4 Court is a determinate sentence of state's prison of 5
5 years plus 10 years post-release supervision.

6 On the fifth count, criminal sexual abuse in
7 the first degree, a class B felony, the sentence of
8 the Court is a determinate sentence of state's prison
9 of 18 years plus 10 years post-release supervision.

10 On the fourth count, criminal sexual abuse
11 in the first degree, a class B felony, the sentence of
12 the Court is a determinate sentence of state's prison
13 of 18 years, plus 10 years post-release supervision.

14 On the third count, criminal sexual abuse in
15 the first degree, a class B felony, the sentence of
16 the Court is a determinate sentence of state's prison
17 of 18 years, plus 10 years post-release supervision.

18 On the second count, criminal sexual abuse
19 in the first degree, a class B felony, the sentence of
20 the Court is a determinate sentence of state's prison
21 of 18 years, plus 10 years post-release supervision.

22 On the first count, criminal sexual act in
23 the first degree, a class B felony, the sentence of
24 the Court is a determinate sentence of state's prison
25 of 18 years plus 10 years post-release supervision.

1 In addition there's a \$275 surcharge, \$25
2 crimes victims fee, \$50 DNA registration fee, all to
3 be taken from inmate funds, all to run concurrent with
4 each other and concurrent with the sentence imposed in
5 Nassau County.

6 I will entertain a signed order of
7 protection if the DA provides one to the Court.
8 Please advise the defendant of his right to appeal.

9 COURT CLERK: You have a right to appeal to
10 the Appellate Division, Second Department, within
11 thirty days, and, in addition, upon proof of financial
12 inability to retain counsel and to pay the cost and
13 expenses of the appeal, you have the right to apply to
14 the Appellate Division, Second Department, for the
15 assignment of counsel and for leave to prosecute the
16 appeal as a poor person and to dispense with printing.

17 The Appellate Division, Second Department,
18 is located at 45 Monroe Place, Brooklyn, New York
19 11201.

20 I hand you a written copy of your notice of
21 appeal. Officer, take charge. Paperwork to follow.

22 MR. BANDELLI: Again, notice of appeal has
23 been handed over to DA of our intent to file an
24 appeal.

25 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT.


mse

CA#132-10

1

COPY

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF QUEENS: CRIMINAL TERM, PART TAP D

-----X

3 THE PEOPLE OF THE STATE OF NEW YORK, Indictment No.

4 -against-

2065-2008

5 Amended Sentence

6 HAROLD GOPAUL,

7 Defendant.

-----X

8 September 10, 2010

9 125-01 Queens Boulevard

10 Kew Gardens, New York 11415

11

12

13

14 B E F O R E :

15 GREGORY L. LASAK,

Justice, Supreme Court

16

17

18

19

MINDY S. ELGARTEN

20

Official Court Reporter

21

22

23

24

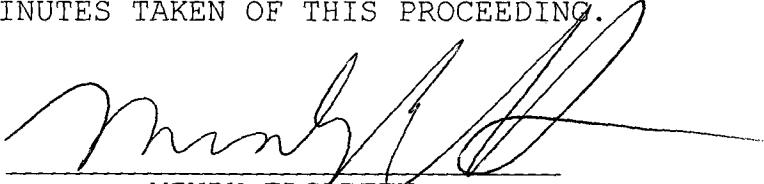
25

1 COURT CLERK: Calendar number 2, Harold
2 Gopaul.

3 THE COURT: All right. The sentence of
4 September 8th 2010 is being amended to add \$50 sex
5 offender registration fee and \$1,000 supplemental sex
6 offender fee, all to be taken from inmates funds.

7
8 * * * * *

9
10 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL
11 STENOGRAPHIC MINUTES TAKEN OF THIS PROCEEDING.

12
13 
14 MINDY ELGARTEN
Official Court Reporter